IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 550 of 2001

with

CIVIL APPLICATION NO. 13250 OF 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SHASHIKANT LABSHANKAR DAVE & OTHERS

Versus

NEW INDIA ASSURANCE CO. LTD.

Appearance:

MR YOGESH S LAKHANI for THE the Appellants

MR PV NANAVATI with Ms Vibhuti Nanavati

for the Respondents

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 06/05/2002

ORAL JUDGEMENT

Mr. Y.S.Lakhani, learned advocate for the appellants/original plaintiffs does not press this Appeal

from Order and seeks leave to withdraw the same without entering into the merits of the case. He further states that the appellants herein wants to move the Trial Court by filing the amendment application as the period of insurance of all the policies taken by the appellants in favour of different persons has expired during the pendency of the appeal. He also requests that appropriate direction may be issued to the Trial Court for expeditious disposal of the suit as there is very less scope of oral evidence. Mr. P.V.Nanavati, learned advocate for the respondents/original defendants has no objection if leave to withdraw the Appeal from Order is granted as well as direction for expeditious disposal of the suit is issued to the Trial Court.

2. In this view of the matter leave to withdraw the Appeal from Order is granted as it is not pressed without entering into the merits of the case. The Appeal from Order is disposed of with no order as to costs, as it is withdrawn without enterint into the merits of the case.

3. Since the appeal from Order is disposed of as it is withdrawn, Civil Application No. 13250 of 2001 which is filed for stay of the impugned order, now does not assume any survival value hence the same is also disposed of with no order as to costs. Rule is discharged.

4. On the facts and in the circumstances emerging from the record of the case, it would be open for the appellants to file appropriate application before the lower Court seeking the amendment in the plaint as the period of insurance of all the policies taken by the appellants in favour of different persons has expired during the pendency of the appeal. If such an application is preferred, the learned Judge of the lower Court shall decide the same in accordance with law.

5. Since the scope of leading the oral evidence is very limited, the learned Judge of the lower Court is directed to expedite the trial of the suit as expeditiously as possible and conclude the hearing including judgement preferably on or before April 30, 2003. However, in doing so, regard shall also be had to the exigency of his files.

6. It is also made clear that the order passed by the learned Judge of the lower Court is at an interlocutory stage, therefore, findings recorded therein are tentative in nature. Therefore, the learned Judge shall decide the suit on the basis of the pleadings and the evidence adduced and produced before him in

accordance with law and uninfluenced by the fact that the application Exhibit-5 is decided in favour of the respondents Insurance Company and this Appeal from Order is disposed of as it is withdrawn without entering into the merits of the case.

Direct service is permitted.

(A.M.Kapadia,J)

Jayanti*